

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



*with affidavits*

**74-1311**

To be argued by  
T. GORMAN REILLY

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-1311**

SCENIC HUDSON PRESERVATION CONFERENCE, THE HUDSON  
RIVER FISHERMEN'S ASSOCIATION, INC., THE SIEMBA CLUB  
and its ATLANTIC CHAPTER, and THOMAS B. LAKE,

*Plaintiffs-Appellants-Appellants,*

*—against—*

HOWARD H. CALLAWAY, individually and as Secretary of  
the Army, Department of Defense, U.S.A., LT. GENERAL  
WILLIAM C. GRIBBLE, individually and as Chief of  
Engineers, Corps of Engineers, U. S. Army and COL.  
HARRY W. LOMBARD, individually and as District En-  
gineer, New York District, Corps of Engineers, U. S.  
Army,

*Defendants-Appellees,*

*—and—*

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,  
*Defendant-Appellant-Appellee.*

**BRIEF OF FEDERAL DEFENDANTS-APPELLEES,  
CALLAWAY, GRIBBLE AND LOMBARD**

PAUL J. GORMAN,

United States Attorney for the  
Southern District of New York,  
Attorney for Federal Defendants-  
Appellees, Callaway, Gribble and  
Lombard.

Dated: May 13, 1974

T. GORMAN REILLY,

ANNE SIDAMON-ERIKOFF,

GERALD A. ROSENBERG,

Assistant United States Attorneys,  
Of Counsel.



## TABLE OF CONTENTS

	PAGE
Statement of the Case .....	1
Issue Presented .....	2
Statement of Facts .....	3
Relevant Statutes .....	5
Applicable Regulation .....	7
<b>ARGUMENT:</b>	
The procedures for review and approval of project structures by the Army Corps of Engineers pursuant to Section 4(e) of the Power Act have supplanted the permit requirements of Section 10 of the Rivers and Harbors Act insofar as hydroelectric projects licensed by the Federal Power Commission are concerned .....	8
CONCLUSION .....	16

### TABLE OF CASES

<i>First Iowa Hydroelectric Co-op v. Federal Power Commission</i> , 328 U.S. 152, 180 (1946) .....	13
<i>Northwest Paper Company v. Federal Power Commission</i> , 344 F.2d 47 (1965) .....	13
<i>Scenic Hudson Preservation Conference v. Federal Power Commission</i> , 354 F.2d 608 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966) [" <i>Scenic Hudson I</i> "] .....	4
<i>Scenic Hudson Preservation Conference v. Federal Power Commission</i> , 453 F.2d 463 (2d Cir. 1971), cert. denied, 407 U.S. 926 (1972) [" <i>Scenic Hudson II</i> "] .....	4



**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-1311**

---

SCENIC HUDSON PRESERVATION CONFERENCE, THE HUDSON  
RIVER FISHERMEN'S ASSOCIATION, INC., THE SIERRA CLUB  
and its ATLANTIC CHAPTER, and THOMAS R. LAKE,  
*Plaintiffs-Appellees-Appellants,*

*—against—*

HOWARD H. CALLAWAY, individually and as Secretary of  
the Army, Department of Defense, U.S.A., LT. GENERAL  
WILLIAM C. GRIBBLE, individually and as Chief of  
Engineers, Corps of Engineers, U. S. Army and COL.  
HARRY W. LOMBARD, individually and as District En-  
gineer, New York District, Corps of Engineers, U. S.  
Army,

*Defendants-Appellees,*

*—and—*

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,  
*Defendant-Appellant-Appellee.*

---

**BRIEF OF FEDERAL DEFENDANTS-APPELLEES,  
CALLAWAY, GRIBBLE AND LOMBARD**

---

**Statement of the Case**

This brief is submitted by the Federal Defendants Callaway, Gribble and Lombard in opposition to the cross-appeal filed by Scenic Hudson. The Government's earlier

brief, dated April 22, 1974, sets forth its opposition to the appeal by Con Edison, challenging that part of the District Court's judgment which requires compliance with Section 404 of the 1972 Amendments.\*

On this cross-appeal Scenic Hudson raises two points: *first*, that the District Court erred in limiting injunctive relief against Con Edison to the actual discharge of fill material; and, *second*, that in addition to a Section 404 permit, Con Edison should be required to seek and obtain a permit under Section 10 of the Rivers and Harbors Act of 1899 for the Storm King project. Inasmuch as the injunctive relief complained of affects only Con Edison, this brief will not address itself to Scenic Hudson's first point. It is the Government's understanding that any expense or effort incurred by Con Edison prior to a ruling by the Corps of Engineers on the Section 404 application is at the company's own risk. In reaching a determination the Federal Defendants will give no weight to the company's activities in this regard. With respect to the second point, the Government submits that Judge Lasker was correct in holding that "no permit is required under § 10 of the Rivers and Harbors Act for construction of the Storm King project" (149a).

### Issue Presented

Is Con Edison required to seek a permit for the Storm King project under Section 10 of the Rivers and Harbors Act when the Army Corps of Engineers has already certified its approval with respect to the project's structures pursuant to Section 4(e) of the Power Act?

---

\* As in the Government's earlier brief, the Federal Water Pollution Control Act Amendments of 1972 are referred to as "the 1972 Amendments"; the Federal Water Power Act of 1920 and the Federal Power Act are referred to interchangeably as "the Power Act"; and, the plaintiffs-appellees-appellants are referred to collectively as "Scenic Hudson".

### Statement of Facts

The principal facts of this case have already been set forth in the Government's earlier brief of April 22, 1974. In order to clarify the issue presented on this cross-appeal, some additional facts should be noted.

In 1963, shortly after Con Edison filed its application for a license for the Storm King project, the Federal Power Commission solicited the views of the Army Corps of Engineers with respect to proposed project structures affecting navigation. This was done by letter dated February 27, 1963 and the cited authority for the referral was Section 4(e) of the Power Act (90a).

Section 4(e) of the Power Act, 16 U.S.C. 797(e), authorizes the Federal Power Commission to issue licenses for the construction and operation of hydroelectric projects. A proviso to Section 4(e) reserves to the Army the right to review the structures of FPC licensed projects insofar as they affect navigation. The Army, after reviewing the data supplied by the FPC in this case, responded by letter of June 7, 1963, stating that the plans of the project structures affecting navigation were satisfactory (91a).

Thereafter, Con Edison sought permission from the New York District Engineer, Army Corps of Engineers, to dredge an area of the Hudson River immediately in front of the tail race and intake structures of the proposed project. After public notice of the proposed dredging was given, the New York District Engineer granted the Con Edison request. The purported authority for this action by the District Engineer was Section 10 of the Rivers and Harbors Act (92a-93a).

Con Edison subsequently applied to the District Engineer for two additional permits in connection with the Storm King project. On June 10, 1965 the District Engineer



granted permission for the laying of an underwater transmission cable (95a-97a), and, on October 26, 1965 he authorized the placement of fill along the waterfront to be used for the creation of a recreational park site in the Village of Cornwall. Again, the purported authority for the issuance of these two permits was Section 10 of the Rivers and Harbors Act.

The first permit expired of its own terms on December 31, 1966. The second and third permit expired on December 31, 1968. Con Edison has never sought to renew the permits nor to obtain additional permits pursuant to Section 10.

In 1966, after this Court had remanded the Storm King licensing order to the FPC for further proceedings, *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966) [*"Scenic Hudson I"*], the views of the Army Corps of Engineers were once again solicited with respect to project structures affecting navigation (102a). By letter dated July 29, 1966, the Army advised that the plans submitted were satisfactory and approval was granted pursuant to Section 4(e) of the Power Act. The FPC issued a licensing order for the project on August 19, 1970. 44 FPC 350. On review, this Court found that the FPC licensing order "fully complied with our earlier mandate and with the applicable statutes . . ." *Scenic Hudson Preservation Conference v. Federal Power Commission*, 453 F.2d 463, 467 (2d Cir. 1971), *cert. denied*, 407 U.S. 926 (1972) [*"Scenic Hudson II"*].

The question of a Section 10 permit for the Storm King project was not raised again until January 24, 1973 when counsel for Scenic Hudson wrote to the New York District Engineer. In this letter he demanded that Con Edison be held to its statutory duty to first seek and obtain a Section 10 permit before dredging and filling at the project site. The District Engineer replied by letter dated March 27,

1973 that no Section 10 permits would be required. He conceded that his office had, in the past, issued three permits for the Storm King project. But, he added,

“[i]t is currently felt that the issuance of these permits may possibly have been in error. The authority of the Secretary of the Army to authorize structures or work in navigable waters in connection with water power projects was transferred to the Federal Power Commission by the Federal Water Power Act of 1920 (41 Stat. 1063; 16 U.S.C. 797). Accordingly, extensions to the expired permits will not be required” (34a).

The position stated by the District Engineer is consistent with regulations which were issued by the central office of the Army Corps of Engineers on December 18, 1968. 33 F.R. 18670, 33 C.F.R. § 209.120(d)(9). Proposed regulations issued on May 10, 1973 are to the same effect. 38 F.R. 12217, 33 C.F.R. § 209.120(c)(6).

### Relevant Statutes

Federal Water Power Act of 1920, as amended  
Title 16, United States Code § 791a *et seq.*

Sec. 4, 16 U.S.C. § 797

The Commission is authorized and empowered—

\* \* \* \* \*

(e) To issue licenses . . . for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has juris-



diction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided, . . . : Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army.

\* \* \* \* \*

Sec. 29, 16 U.S.C. § 823

All Acts or parts of Acts inconsistent with this chapter are repealed. . . .

Rivers and Harbors Act of 1899

Title 33, United States Code § 401 *et seq.*

Sec. 10, 33 U.S.C. § 403

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor or

refuge, or inclosure within the limits of any break-water, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

### **Applicable Regulation**

#### **33 Code of Federal Regulations Part 209**

Sec. 209.120(d) (9), 33 C.F.R. § 209.120(d) (9)

"On April 7, 1965, the U. S. Court of Appeals for the 8th Circuit in *Northwest Paper Company v. Federal Power Commission* (344 F.2d 47, CA No. 17,679, Apr. 7, 1965), concluded that by the Federal Water Power Act of 1920 Congress centralized the authority over water power projects in the Federal Power Commission. The same Court on the same date reached the same conclusion in *Minnesota Power & Light Company v. Federal Power Commission* (344 F.2d 53, CA 8 No. 17,880, Apr. 7, 1965). The effect of the April 7 decisions was to affirm the opinion of the Attorney General of May 3, 1921 (32 Op. A.G. 525), that the functions of the Chief of Engineers and the Secretary of the Army to authorize non-Federal water power projects or modifications of existing pre-1920 non-Federal water power projects were transferred to the Federal Power Commission by the Federal Water Power Act of 1920 (41 Stat. 1063). Applications for approval of repairs, maintenance or modifications for non-Federal water power projects authorized under the River and Harbor Acts as well as special Acts of Congress prior to 1920, or requests for advice with respect thereto are referred by the District Engineer to the Federal Power Commission for consideration in accordance with the provisions of the Federal Water Power Act. The District Engineer

will advise the applicant of the referral of the application to the Federal Power Commission for consideration. In the event a commission license is necessary to authorize modifications, the project plans affecting navigation would be submitted by the Commission to the Chief of Engineers and the Secretary of the Army for approval prior to the issuance of any such license in accordance with Section 4(e) of the Federal Water Power Act. Such approval would in effect constitute approval of modifications to the original structure as contemplated by the early River and Harbor Acts and Special Acts of Congress prior to 1920."

## ARGUMENT

**The procedures for review and approval of project structures by the Army Corps of Engineers pursuant to Section 4(e) of the Power Act have supplanted the permit requirements of Section 10 of the Rivers and Harbors Act insofar as hydroelectric projects licensed by the Federal Power Commission are concerned.**

It is Scenic Hudson's contention that Con Edison must not only secure a permit for the placing of fill pursuant to Section 404 of the 1972 Amendments, but that the company must also seek and obtain a permit for dredging and filling pursuant to Section 10 of the Rivers and Harbors Act. The Government disputes this contention and has advised Scenic Hudson that it will take no action to insure that Con Edison complies with the Section 10 permit requirements. The basis for the Government's position is that insofar as hydroelectric projects licensed by the FPC are concerned, the procedures for review by the Army Corps of Engineers found in Section 4(e) of the Power Act have supplanted the permit requirements of Section 10 of the Rivers and



Harbors Act. The Army Corps of Engineers has already given its approval for the proposed dredging and filling at the Storm King project site when, pursuant to Section 4(e) of the Power Act, it reviewed and approved the plans for project structures affecting navigation in connection with the FPC license application. This was done in 1963, and again in 1966, following remand of the licensing order by this Court. Nothing further is required.

It is readily conceded that if the proposed dredging and filling activities at Storm King did not involve a hydroelectric project subject to the licensing power of the FPC, a Section 10 permit would be required. However, by reason of the passage of the Federal Water Power Act of 1920 the functions of the Army Corps of Engineers in reviewing dredging and filling operations were incorporated into the FPC licensing process.

Section 4(e) of the Power Act empowers the FPC to issue licenses,

" . . . for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction . . ."  
16 U.S.C. § 797(e).

An important and extremely relevant proviso to Section 4(e) vests authority for the review of project works affecting navigation in the Army Corps of Engineers. The proviso reads:

" . . . [N]o license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army."  
16 U.S.C. § 797(e).

The Power Act when enacted in 1920 was designed as a comprehensive program for the regulation and development of hydroelectric projects. A principle aim of the legislation was to centralize existing authority over such projects in a single agency and to avoid duplication of effort.\* This much is clear from a reading of the House Report of the Committee on Water Power which considered the bill:

"The bill . . . provides that the administration of water powers within Federal jurisdiction, which have hitherto been handled independently by three separate departments, shall be coordinated through a commission composed of the heads of these departments, in order that duplication may be avoided, that a common policy may be pursued, and that the combined efforts of the three agencies may be directed towards a constructive national program of intelligent economical utilization of our resources. . . .

. . .

"The salient features of the bill herewith reported are the creation of a commission known as the Federal Power Commission to be composed of the Secretaries of War, Interior and Agriculture. To this Commission are given the powers heretofore

---

\* The fact that Congress in 1920 sought to centralize authority that had been previously exercised over hydroelectric projects by several agencies does not detract from or conflict with the Government's position on the appeal by Con Edison that a Section 404 permit is required for the Storm King project. The 1972 Amendments were enacted more than 50 years after passage of the Power Act. Moreover, in 1972, it was the overriding congressional concern that all water pollution, no matter what the source, be prohibited. For this reason principal responsibility for enforcement of the 1972 Amendments was vested in the Environmental Protection Agency. An express but limited grant of authority with respect to Section 404 permits was made to the Army Corps of Engineers.



exercised by the Secretaries in connection with water power development under their several jurisdictions." House Report No. 61, 66th Cong. 1st Sess., reprinted in Senate Report No. 180, 66th Cong. 1st Sess. at 5-6.

Despite this unequivocal Committee statement, Scenic Hudson argues in its brief that the legislative history of the Power Act dictates that the Secretary of the Army must continue to exercise his Section 10 jurisdiction with respect to hydroelectric projects (Scenic Hudson Brief pp. 46-47). An exchange during Committee Hearings between a spokesman for the Department of Agriculture and Congressman Hamilton is quoted for the proposition that the authority of the Secretary of War to approve structures that go across navigable waters is continued and is not diminished by the new legislation. A statement by the Secretary of Agriculture is quoted to the same effect. But these statements expressed by the Agriculture Department do not compel a finding that the Army Corps of Engineers must engage in a duplicative licensing procedure. The thrust of these comments is nothing more than that by virtue of the proviso to Section 4(e) the Army retains the power to approve or disapprove project structures affecting navigation. The licensing authority is vested in the FPC. But, in accordance with the proviso, no license may issue without the prior approval of the Army Corps of Engineers for project structures affecting navigation. This is quite different from saying that the Corps of Engineers must, in addition, continue to issue Section 10 permits. No purpose would be served by such duplication and the legislative intent is clear that such duplication is to be avoided.

Section 29 of the Power Act gives force to the legislative intent to centralize authority and to eliminate duplication. It provides quite simply: "All Acts or parts of Acts inconsistent with this chapter are repealed." 16 U.S.C. § 823. Since the time of the enactment of the Power Act of 1920, the Army Corps of Engineers has deemed the application

of Section 10 of the Rivers and Harbors Act to hydroelectric projects to be inconsistent with the explicit review procedures set forth in Section 4(e) of the Power Act. As stated in the affidavit of James E. DeSista, a knowledgeable official of the Army Corps of Engineers,\* it has been the general policy of the Corps since 1920 "not to issue Section 10 permits for activities on navigable waters which are covered by an application for FPC license" (125a).

The Corps' position with respect to the non-applicability of Section 10 to hydroelectric projects such as Storm King should come as no surprise to Scenic Hudson. It is a policy of long standing which is consistent with an authoritative opinion of the Attorney General, judicial precedents, and the Corps' own regulations.

Almost immediately following passage of the Power Act the Attorney General was called upon to advise the Secretary of Agriculture concerning his authority to approve the transfer of permits involving hydroelectric projects which had previously been issued by him. The short answer was that the Secretary's authority with respect to such permits had terminated and was now vested in the FPC. 32 Op. Atty. Gen. 525 (1921). The Attorney-General expressed his reasoning as follows:

"It seems clear that it was the purpose of Congress to bring under this Act all future power development within the jurisdiction of the United States and to concentrate in the hands of the Federal Power

---

\* Mr. DeSista is currently Chief of the Regulatory Functions Branch, Operations Division, Directorate of Civil Works. Employed by the Army Corps of Engineers since 1936, he has been directly involved in the permit program under Section 10 of the Rivers and Harbors Act since at least 1954. In his affidavit, submitted to the District Court, he reviewed the past practice of the Army Corps with respect to dredging and filling operations by F.P.C. licensed projects. His finding was that no separate Section 10 permits have been required for these projects.

Commission all the administrative authority thereover which was in part previously distributed among the Secretaries of the Interior, Agriculture, and War. It is also clear that no further original permits, at least, were thereafter to be issued by the Secretaries. It is believed that practically all the permits issued by them are limited in time; and when they expire new licenses will be issued by the Commission and not by the Secretaries, respectively. It is therefore evident that the intent of the Act, as well as its necessary operation, is to ultimately bring under the new law and under the control of the Federal Power Commission all existing as well as all future developments." 32 Op. Atty Gen. 525, 528 (1921).

The Supreme Court has given an equally expansive reading to the Power Act. It has stated that the purpose of the Act was to create "a complete scheme of national regulation which would promote the comprehensive development of the water resources of the Nation, insofar as it was within the reach of the federal power to do so, instead of the piecemeal, restrictive, negative approach of the Rivers and Harbors Act and the federal laws previously enacted." *First Iowa Hydroelectric Co-op v. Federal Power Commission*, 328 U.S. 152, 180 (1946).

The Eighth Circuit Court of Appeals in *Northwest Paper Company v. Federal Power Commission*, 344 F.2d 47 (1965) and *Minnesota Power & Light Company v. Federal Power Commission*, 344 F.2d 53 (1965) reached the same conclusion in considering whether certain power projects which had originally been authorized directly by Congress, prior to 1920, were now subject to the licensing authority of the Federal Power Commission. Answering the question in the affirmative, the Court relied on the fact that it was the legislative intent of the Power Act "to centralize the authority over such [water power] resources in one Governmental agency." *Northwest Paper Company v. Federal Power Commission*, *supra*, at 51.



No court prior to the instant case had occasion to rule on the precise issue of whether or not Section 10 permits are required for hydroelectric projects licensed by the FPC. But, in finding that no Section 10 permit was required, the District Court was able to rely upon regulations issued by the Army Corps of Engineers which bear directly on the matter. The currently effective regulations, 33 CFR § 209.120(d)(9), state clearly that

"... the functions of the Chief of Engineers and the Secretary of the Army to authorize non-Federal water power projects or modifications of existing pre-1920 non-Federal water power projects were transferred to the Federal Power Commission by the Federal Water Power Act of 1920" (41 Stat. 1063).

Proposed regulations, published after passage of the 1972 Amendments, reaffirm the Corps' longstanding practice not to issue Section 10 permits for hydroelectric projects licensed by the FPC. 38 Fed. Reg. 12218 (May 10, 1973). Section 209.120(c)(6) of the new regulations provides that where project structures of a proposed hydroelectric facility will affect navigable waters,

"the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the FPC for the inclusion of appropriate provisions rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 *et seq.*"

In its brief *Scenic Hudson* emphasizes the fact that in this very case the Corps of Engineers did exercise its authority under Section 10 of the Rivers and Harbors Act when it issued permits for the Storm King project in 1963

and 1965. But, as explained by the District Engineer, these permits were issued in error (34a). And, as further explained in the DeSista affidavit, the fact that a few Section 10 permits may have been issued by a local District or Division Engineer pursuant to a delegated authority was not the result of any policy decision or directive from the Office of the Chief of Engineers (126a). As stated already, the general policy of the Corps has been *not* to issue Section 10 permits for FPC licensed hydroelectric projects (125a). This general policy has been codified in the regulations previously cited.

In sum, the plans for structures of the Storm King project that affect navigable waters have already been reviewed and approved by the Army Corps of Engineers during the course of the FPC licensing proceeding. Scenic Hudson had the opportunity to contest the Army's approval for the proposed dredging and filling at that time before the FPC. It makes little sense to insist that the Army now go through the motions again to review the same data as part of a Section 10 permit proceeding. The law requires no such pointless duplication of effort.



## CONCLUSION

The cross-appeal of Scenic Hudson from that part of the judgment holding that the Storm King project is not subject to the permit requirements of Section 10 of the Rivers and Harbors Act should be dismissed and the judgment affirmed.

Respectfully submitted,

PAUL J. CURRAN,  
*United States Attorney for the  
Southern District of New York,  
Attorney for Federal Defendants-  
Appellees, Callaway, Gribble and  
Lombard.*

Dated: May 13, 1974

T. GORMAN REILLY,  
ANNE SIDAMON-ERISTOFF,  
GERALD A. ROSENBERG,  
*Assistant United States Attorneys,  
Of Counsel.*

OTHER AUTHORITIES

PAGE

*Statutes:*

Federal Water Pollution Control Act Amendments  
of 1972:

Title 33, United States Code, § 1251 *et seq.*

Sec. 404, 33 U.S.C. § 1344 ..... 10

Federal Water Power Act of 1920, as amended:

Title 16, United States Code, § 791a *et seq.*

Sec. 4(e), 16 U.S.C. § 797(e) ..... 3, 4, 9

Sec. 29, 16 U.S.C. § 823 ..... 11

Rivers and Harbors Act of 1899:

Title 33, United States Code, § 401 *et seq.*

Sec. 10, 33 U.S.C. § 403 ..... 3, 4

*Regulations:*

33 C.F.R. § 209.120(d) (9) ..... 5, 14

33 C.F.R. § 209.120(c) (6) [Proposed] ..... 5, 14

*Miscellaneous:*

House Report No. 61, 65th Cong. 1st Sess., reprinted  
in Senate Report No. 180, 66th Cong. 1st Sess.

(1919) ..... 10-11

32 Opinions of the Attorney General 525 (1921).... 12-13

74-1311  
Binder 5-9-14



AFFIDAVIT OF MAILING

State of New York     )  
County of New York    )

Pauline Troia

being duly sworn,  
deposes and says that he is employed in the Office of the  
United States Attorney for the Southern District of New York.

That on the 9th day of

May 19 74 he served a copy of the within

~~XXXX~~ Brief of Federal defendants  
Callaway, Gribble & Lombard

by placing the same in a properly postpaid franked envelope

addressed:

- 2 copies on G. S. Peter Bergen, One Chase Manhattan Plaza, NY NY 10005
- 1 copy on Berle, Butzel & Kass, Esqs., 425 Park Ave. NY NY 10022
- 1 copy on Winer, Neuburger & Sive, Esqs., 425 Park Ave. NY NY 10022

And deponent further says  
she sealed the said envelopes and placed the same in the  
mail chute drop for mailing in the United States Courthouse,  
Coley Square, Borough of Manhattan, City of New York.

Pauline Troia

worn to before me this

9th day of May 19 74

Lynwood Hayes

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975